1949

File No. O Trans of

Legal Department-Property

49

A BRANCH

Subject:— Opinions under the

Transfer of Property

Act 1882.

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348-A

File No. O Trans of Pty /49

Gen. 194

C O N T E N T S.

Legal Department File No.C Tr. f Property/49.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Transfer of Property Act, 1882.	
1.	R.I.No.3000/16-3-49. O.No.3422/26-3-49.	Whether the information required in Cr.3. regarding the assets of Khoyde's Jamera Carbn Ltd. Belgaum and the extent of Govt's liens should be supplied to him.	1 - 4
2.	R.I.No.4782/31-3-49. O.No.4077/14-4-49.	Whether the Collr's view that the condition regarding sub-letting applies to structures also and that Cr.2 has committed a breach of the conditions of the tenancy is correct. Whether in the absence of any formal agreement there is a binding contract.	5 - 6
3.	R.I No.3884/6-4-49. O.No.4571/19-4-49.	Swastik Rubber Products Ltd.Poona expansion of Rubber Factory -- Whether the personal security in free d in view of the execution of the mortgage deed.	7 - 12.
4.	R.I.No.3848/2-3-49. O.No.3868/5-4-49.	(i) Whether under the terms of his offer, Cr.3. could mortgage the plots in respect of which full purchase price was not paid by him. (ii) Whether the Official Assignee can pay the balance of the purchase price on behalf of Cr.3. and require Govt. to execute documents in his name. (iii) Whether Govt. can legally order that the amount paid by Cr.3. s 1/6 the price should be forfeited and the plots disposed of ---	13 - 19.
5.	O.No.7878/4-7-49.	Secs.53-A and 108(7) . Agreement to sale-whether rights thereunder be recorded in the Records of Rights.	19 - 20
6.	R.I.No.12660/14-11-49 O.No.14858/21-12-49.	Cama Motors Ltd- Structures erected by-- whether actually purchased by Govt. and Govt. was liable to pay the purchase price of the same to M/S. Cama Motors Ltd.	21 - 24
7.	O.No.14034/5-12-49.	Whether remedy under Cl.7 of the mortgage in Form C and the agreement in Form would be available. Whether remedy under Cl.8 of the mortgage and sell the Property after a formal notice is given under Sec. 69(2) of -----	25 - 28

M.M.S/C/55

CC.

2. By G.R. I.&I.D.No.S.168 dated the 28th Feb 1948, sanction was accorded to the grant of a loan of Rs.50,000/- to the Shanta Cement Works Ltd., Belgaum on the terms and conditions mentioned therein One of the conditions was that the company should give first charges to Govt. of all the property, assets present or future and a floating charge should be created on all the assets of the Company. The loan was tobe unpaid in four years in annual instalments of Rs.12,5000/-, plus interest due. It now transpires that one Mr.V.P.Shah has obtained a money decree for Rs.489-8-0 and he has requested Govt. to give him particulars of the assets of the Company and the extent of Govts lien on them. The R.L.A. has been requested to advise whether the information sought for should be supplied to him.

E.F,E.6/6/56

40.

Office of the D.C.A.

Mr.Unah may be informed that the Company has given first charges to Government of all its property assets, present and future and a floating charge on all its assets and that it is not possible to give the details of its assets at this stage. He may also be informed of the extent of Government's lien.

Sd/ P.L.Lad.

Pemembrancer of Legal Affairs.

L.D. to D.C.A. I.D.,No. 3322, dated the 26th March 1949.

S.K.M.6/6/56

4C.

Office of the A.L.A.

Cancellation of monthly lease for breach of conditions and recovery of arrears of ground rent by attachment and sale of property.

Bombay City Land Revenue Act,1876. Section 13.

On 8th August 1946 the Collector of Bombay wrote to Mr.Nawab if he was willing to have the land on a monthly tenancy on certain terms stated therein. Mr. Nawab in his reply agreed to all the conditions stated in the letter. Later he having expressed his willingness to take the whole land the Collector wrote to the applicant on 19th July 1947 that the lease was granted to him on terms and conditions already communicated to him. Government accorded formal sanction to the tenancy by G.R.,R.D.,No.3436/45, dated 16-3-1948. Although no agreement to lease has been executed between him and the Government the same can be spelt out from the correspondence. It was reported that some of the sheds on the land were sub let at exhorbitantrents. This was clearly a breach of the condition No.(4) because he could not sub-let the sheds without sub-letti also the land under them. The Collector's action in terminating the lease with effect from 1-2-1949 after one months's notice was therefore proper and correct (see page 31 and condition (8) of the G.R.R.D., No. 3436/45, dated 16-3-1948). After the termination of the lease structures on the land vested in Government under clause (h) of section 108 of the Transfer of property Act as they were not removed before possession of the land was ~~xxxxxx~~ taken by the Collector. Consequently it would be open to the Collector to recover arrears of ground rent not by attachment and sale of structures but by attachment and sale of some other property of the lessee, moveable or immoveable, under section 13 of the Bombay City Land Revenue Act,1876

Sd/ P.M Lad.
Remembrancer of Legal Affairs.

G.R. to R.D.,No.4070,dated the 16th April 1949.

G.O.R.T. 5084 dated 6-4-1940

Submitted.

2. By G.O.P.,T.& I.D.(I.S.) No.188 dated 3rd August 1942, Government sanctioned a loan of Rs.600000/- (six lakhs) to the Anantik Rubber Factory inter alia on the following conditions.

(a)

(b) that the loan should bear simple interest at the rate of 5% p.a.and in case of default, compound interest of 5% on the defaulted amount of ~~principal~~ principal and interest.

(c) that the loan should be repaid within seven years in the annual instalments as follows:-

1st and 2nd Year ...	...	Nil
3rd to 6th Year ...	...	Rs.1,00,000/- per year.
7th year	... ...	Rs.3,00,000/ per year.

and the company may repay the whole or part of the loan earlier than the period fixed.

(d) that the company ~~incorporated~~ should be converted into a public company within one year from the date of receipt of Government loan.

(e) that Government will be entitled till complete repayment of loan and interest to nominate three Director's on the Board of Directors etc.

(f) that the company should give first charge to Government of all its property, assets present and future and also any patent rights secured or to be secured by Mr.Vaidya (Partner/ Managing Agent) against the grant. The Government should have the right of preemption in the case of these rights so long as loan and interest are not completely paid etc.

Out of the loan so sanctioned the Director of Industries was directed to pay immediately Rs. one lakh and eighty two thousand to the company against the production of one or more personal securities, pending settlement of other formalities like execution ofmortgate died etc. The company however furnished a personal security for 1,50,000/- and received that amount from Government. Subsequently the company executed a mortgage deed in favour of Government whereby all the property assects, machinery and dead stock etc. were mortgaged to Government in view of the loan of Rs.6,00,000/- advanced to it. (Rs.1,50,000/- ~~advanceduptoitx~~ in part payment against a personal security and Rs.4,50,000/- at the time of theexecution of the mortgage deed. In this connection please see the letter from the Company to Government at p.1099 post. It is therein stated that as the mortgage deed for the loans of 6 lakhs (which included Rs.1,50,000/- taken against a personal security) has been executed, the company is of the opinion the personal security is redeemed and free. Against this released security the company wants to take an additional loan. The R.L.A. has been requested to advise whether thepersonal security is freed in view of the execution of the mortgage deed.

3. It appears from the letter of the Director of Industries atp.35 and the R.L.A.'s office note at p.4 ante that the agregate loan of Rs.6,00,000/- was sanctioned against the estimated value of the buildings and machinery etc. worth about Rs.14,50,000/- which constitute the total assets of the Compan .
In clause 1 of the mortgage deed it is stated-

"In pursuance of the said agreement and in consideration of Rs.1,50,000/- (Rupees on lakh fifty thousand only) paid by the mortgage

to the Mortgagor on the 26th day of August 194
in part payment of the said loan and of the further sum of 4,8[illegible],0.0/-only (four lakhs and fifty thou and only) paid by the Mortgage to the Mortgagor on or before the executi n of these presents making together the said aggregate sum of Rs.6,00,000/- only etc."

In para 3 of c..., .a.I.V.No.S.168, dated 3-8-1943 it is stated that as against immediate part payment of Rs.1,,2,000/- the c.mpany should give personal security of pending settlement of other formalities. Now thats full fledged mortgage deed has been executed for the loan advanced to them, the personal security furnished by the company (morgagor for partial advance of the sanctioned loan would automatically be redeemed and freed.

K.V.W.6/C/56

4C.

Office of the A.G.A.

Seen and returned.

The view expressed in para 3: of E.&I.D.note dated 28-3-1949 is correct.

Sd/ P.B.Lad.

Remembrancer of Legal Affairs.

U.O. to E.&I.D. No.4271, dated the 19th April 1949.

E.F.N.6/6/56

40.

I.D.R.I.No.1845.dt.8-2-49

p.5 of file 1845.

In his letter dt. 25-1-1945, addressed to the Collector, B.S.D., Mr.P.P.Samant offered to purchase plot Nos.468, 469,470,471, 140,141,142,143, and 144 of the Suburban Scheme No.III-Chembur, measuring about 6853 sq.yds. The Collr. B.S.D. forwarded the papers to Govt.recommending that the offer of Mr.Samant may be accepted. By their letter No.789/45-G, dt,7-8-45, Govt. accorded sanction to the sale of the plots in question to Mr.P.P.Samant, and directed that brokeage at the schedule rate should be paid to the schedule rate should be paid to the Architects M/s.Patki and Dadakar. By his letter No.L.N.D.A.-1645 dt,258-45, the D.D.C. B.S.D. informed Mr. Samant as follows:-

pp.7-9-do.

p.25. do.

p.27 d

"I have the honour to inform you that Govt. has accepted your offer dated the 25th January 1945 for the pruchase of the above plots. The actual area and the total purchase price of the plots will be intimated to your shortly when the plans to the plots are prepared. In the menawhile please arrange to pay into this office the sum of Rs.4,350/- on account of the balance to make up 1/4 of the price of the plots within a month of the date of this letter failing which you will have to pay interest at 9 p.c. to the date of payment of the amount."

p.28 of file 1645,

It appears that a cheque of Rs.4,350/-was sent to the D.D.C. on 21-11-45.

The plots were demarcated on the spot, and in his letter L.N.D.A.1465, dt.30-8-47, the D.D.C.,B.S.D.informed Mr.Samant that the plots Nos.140 to 144 measured 2831 sq. yeds. and

plots Nos. 468 to 472 measur d 3145 sq. yeds. as shown on the plans, and he was asked to pay the cost of democration and of plans amounting to Rs.77-3-10. It appears that M/s.K.J.Kale & Co., Solicitors of M/s.Rajpatlal Finace Corporation p.51 do. (mortages) paid the sum of Rs.77-3-0. They also paid interest amounting to s.53-2-8, and informed the D.D.C. that as Mr.Samant was delcared insolvent p.61 Do. the communication should be carried on with the mortgages M/s Rajpatlal Finance Corporation.

By his letter dt.13-8-48, the Official p.71 do. Assignee informed the Collr.B.S.D. that Mr. Samant having become insolvent, all his estate and effects have become vested in him in pursuance of the adjudication order made by the H.C. and stated that as the mortgagees Land proposed to pay up the entire balance due to Govt. the deposit need not be fofeited. Altong with his leter dt.16-9-48, the pp.75-56 do Official Assingee forwarded a cheque of Rs. 16.384-8-0 inclusive of interest to the Collr. and requested him to send him all the documents etc. in respect of theplots in question. In his letter No.L.N.DA1645 dt.30-948, the Collr.,B.S.D.,apprised pp-13-14ante Govt. of the State of affairs and requested orders whether the amount sent by the Official Assignee should be accepted and the necessary documents should be sentto him.

The question faised for R.L.A's considerationare:-

(1) Whether under the terms of his offer, Mr.Samant could mortgage the plots in respect of which full purchase price was not paid by him.

(2) Whether the Official Assignee can pay the balance of the purchase price on behalf of Mr.Samant, and require Govt. to execute documents in his name;

(3)Whether Govt. can legally order that the amountpaid by Mr.Samand as 1/4 price should be forfeited and the plots disposed of.

Office of the R.L.A.

Question 1- Mr.Samant could not mortgage by deposit of title-deeds not by reason of non-payment of the full price but by reason of no title to the reclaimed land vesting in him for want of any conveyance deed from Government in conformity with section 175(3) of the Government of India, Act,1935.

Question 2. By virtue of section 1 of the Presidency Town Insolvency Act the Official Assignee is entitled ot claim fulfilment of the agreement between Government and Mr.Samant.

Question 3. There is no provision in the agreement entitling Government to forfeit the amount paid by Mr.Samantas 1/4 price when the balance has been paid within three years from the date of possession given to Mr.Samnt (see the letter of offer at page 1 ante).

Sd/- P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.,No.3666, dated the 5th April 1949.

E.K.M.6/6/56

4C-

Office of the R.L.A.

Bombay Tenancy Act,1939.

Transfer of Property Act, section 53-A and 108(J).

Agreement to sale-whether rights their under be recorded in the records of Rights.

The agreement of sale between Somabhai, of the lands and Patel Khimjibhai provides for an absolute assignment of the former's rights with immediate possession to the latter on payment of Rs.6000 in fifteen yearly instalments with interest. This agreement would fall under section 53A of the Transfer of Property Act and be available to Patel Khimji for maintaining his possession as an absolute assignee of the lessee's interest under section 108(j) even if suit werefiled for his eviction. Consequently Patl Khimji's name amy be entered in the Record of Rights as an assignee of the lessee's rights under the lease. There being no relationship of landlord and tenant between Somabhai and Patel Khimji the orders of Government at page 9 ante will have to be cancelled.

Sd/- P.H.Lad.

Remembrancerof Legal Affairs.

U.R. to R.D.No.7372, dated the 4th July 1949.

L.D.R.T.NO.18580 dt.14.11.1949.

S.No.3265 of Shahpur Ward No.2 sheet No.58 situated at Lal Darwaja was taken on lease by the Cama Transport Sergice Co.Ltd.,Ahmedabad for the purpose of erecting their garage & office. The lease was to expire by the end of March 1948 and the Cama Transport Co. would have had to remove the structures erected by them in April1948. But as the Asstt. Housing Commr. proposed to utilise the said structures as the office of the Executive Engineer, Housing, he wrote to the Collector requesting him to negotiate with M/s.Cama Motors Ltd. for the purchase of these structures atna reasonable price. The collector by his letter dated 3-1-48 intimated Asstt. Housing Commr. that the value of the structures was not more than 19000/- and that as the plot was to be converted into a park, it would not be desirable to keep the office of the Executive Engineer there parmanently. The matter was then referred to Govt.under Housing Commrs letter dated 19-1-48 and Govt. issued order to the Commr. on 22.3.48 and asked the Collector notto renew the lease granted to Khan Bahadur Cama & to transfer the site temporarily to Housing Dept. for locating the office of the Executive Engineer. The Housing Dept. was asked to negotiate with Khan Bahadur Cama Direct for the price to be paid for the structures and to look out for other suitable premises which might be requisitioned for locating the office the Executive Engineer, as it was not desirable to keep structures on that site or to separate the site permanently from the proposed

municipal p.rk. On receipt of these .rders, the Housing Commr,asked the Asst. H.C. not to purchase the structures but to take them on lease as they were notrequired permanently. He was further informed that reasonable rent may be settled & if there was any ~~diss~~ difficulty the structures may be requisitioned through the Collector. The A.H.C informed the Collector accordingly. On 9/7/48 the Collector wrote to the A.H.C. inviting attention to Govt.Orders & asking him to have the lease agreement executed before the City Survey Officer, Ahmedabad.

When the executive Engineer wrote to M/S Cama Motors Ltd they refused the execute the lease and wrote a letter on 11/8/48 stating that the negotiation from the very beginning were for the sale of the entire structure & claimed the claude of the entire structures as they stood when possession was handed over by them. The Collector was informed of the refusal to execute thelease and the contention of M/s.Cama Motors Ltd.,& he was requested to requsition the said structures & to fix the compensation on that account. Thus, the structures were requisitioned under the Collectors Order No.272 dated 14-9-48. M /s.Cama Motors Ltd. protested against this order in their letterdt.17/9/48 & subsequent letters dt.21/2/49 & 17/3/49 addressed to the H.M.(H) & Asst. Secy, H.D. respectively.

The question for R.L.A's consideration is whether from the correspondence it can be said that the structures in question were actually pruchased by Govt. & Govt. was liable to pay the pruchase price of the same to M/SCama Motors Dted.

The contention of the Housing Dept. is that the matter had not progressed beyond the stage of negotiation. Secy. Labour Dept. is fo the same opinion. According to him, cama Motors have no claims as there is no agreement to purchase the structure.

Office of the H.L.A.

Cama Motors Ltd.
Structures erected
by.

Seen and returned.

The view taken by the Secretary, Labour Department in his note dated the 10th November 1949 is correct.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.N. to Labour Department No.14852,

dated the 21st December 1949

E.E.N. 6/6/56

4C-

Office of the R.L.A.

The remedy under clause 7 of the mortgagexx in Form C and the agreement in Form B would not be available as the property which consists of tools in the present case would be exempt from saleunder section 156 of the Bombay Land Revenue Code . Consequently Government will have to resort to clause 6 of the mortgage and sell the property after a formal notice is given to the defaulter under section 69(2) of the Transfer of Property Act.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.O. to R.H.D.No. 14034, dated the 5th December 1949.

E.K.N.6/6/56-

4C.